

IN THE COURT OF APPEALS OF IOWA

No. 3-208 / 12-0662
Filed April 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

PAUL JOHN KRAMER,
Defendant-Appellant.

Appeal from the Iowa District Court for Dubuque County, Robert Richter,
District Associate Judge.

Paul Kramer contests his convictions for driving while barred, driving
under suspension, and operating without registration. **AFFIRMED.**

Scott J. Nelson, Dubuque, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney
General, Ralph Potter, County Attorney, and Mark Hostager, Assistant County
Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

The defendant contests his convictions for driving while barred, driving under suspension, and operating without registration. On appeal, he advances three arguments: (1) the State failed to prove he was operating the pickup truck followed by the police; (2) the county attorney lacked authority to prosecute him; and (3) the police officer lacked authority to arrest him. Finding Kramer is not entitled to relief on any of his three claims, we affirm.

I. Background Facts and Proceedings

On February 2, 2011, around 7 p.m., Cascade police officer Mitchell Kelchen followed a green Ford Ranger through town. He radioed in the license plate number to dispatch and learned the pickup truck's registration had been expired for more than one year. The driver, Paul John Kramer, pulled into his driveway just as the officer signaled him to stop. The officer followed Kramer into the driveway.

Kramer was the only person the officer saw in the truck. A video-recording of the stop shows Kramer coming from the driver's side of the truck back to the squad car. The officer told Kramer about the expired registration. They walked together to the pickup, where Kramer brushed snow from his bumper to reveal the expired sticker on the plate.

Kramer could not produce a driver's license but told the officer his name and date of birth. Officer Kelchen relayed these facts to dispatch was informed the officer that Kramer's license was barred and suspended. The officer told Kramer he would be arrested for driving while barred. Before his arrest, Kramer

took a call on his cell phone. The officer heard Kramer tell the caller: “Evidently the tag on my truck was expired so I got stopped.”

The State filed a trial information on February 17, 2011, charging Kramer with driving while barred, in violation of Iowa Code section 321.561 (2011). The State also charged Kramer with two simple misdemeanors: driving under suspension in violation of section 321.218 and operating without registration in violation of section 321.98.

Kramer moved to dismiss his charges on September 7, 2011, alleging Officer Kelchen lacked authority under Iowa Code sections 321.1(50) and 801.4(11) to arrest him. The district court overruled the motion to dismiss. Kramer filed another motion to dismiss on February 27, 2012. This time Kramer challenged the authority of the county attorney to file charges against him. The court overruled the second motion to dismiss.

The case proceeded to a bench trial. The court found beyond a reasonable doubt that Kramer was operating a motor vehicle on February 2, 2011, without proper license or registration. The court sentenced Kramer to one year incarceration but suspended all but seven days and fined him \$625.

Kramer timely filed a notice of appeal from his indictable offense and sought discretionary review of his two simple misdemeanor convictions. The supreme court granted his application for discretionary review from his simple misdemeanor convictions and joined them in this appeal.

II. Standards of Review

When a defendant challenges the sufficiency of the evidence, we review the record to decide if substantial evidence supports the verdict. *State v. Ross*, 512 N.W.2d 830, 832 (Iowa Ct. App. 1993). The same test applies in bench trials as jury trials. *Id.* The decision in a bench trial has the same force as a jury verdict. *Id.* We review the evidence in the light most favorable to the prosecution and entertain all reasonable inferences which arise from the evidence. *Id.* Substantial evidence means evidence which would convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt. *State v. Blair*, 347 N.W.2d 416, 419 (Iowa 1984). “Circumstantial evidence is equally probative as direct evidence for the State to use to prove a defendant guilty beyond a reasonable doubt.” *State v. Brubaker*, 805 N.W.2d 164, 172 (Iowa 2011).

Kramer’s claims regarding the authority of the county attorney and police involve issues of statutory interpretation, which we review for errors at law. See *State v. Allensworth*, 823 N.W.2d 411, 413 (Iowa 2012). To the extent Kramer’s arguments invoke the state constitution, our review is de novo. See *State v. Ochoa*, 792 N.W.2d 260, 264 (Iowa 2010).

III. Analysis

A. Evidence of “Operation”

All three of Kramer’s convictions required proof he was operating his pickup on the evening in question. On appeal, he asserts Officer Kelchen’s

testimony did not establish this element.¹ Kramer points to the officer's cross-examination where he acknowledged he could not see Kramer exit the vehicle in the driveway.² Kramer contends the officer's assumption that the defendant was driving based on his emergence from the driver's side of the vehicle does not amount to proof beyond a reasonable doubt.

The State may prove the act of operating a motor vehicle by circumstantial evidence. *State v. Hopkins*, 576 N.W.2d 374, 377–78 (Iowa 1998). Circumstantial evidence means proving one fact or a set of facts from which the trier of fact may infer the existence of the essential fact. *Id.* It is a two-step process: (1) a witness asserts what he or she saw, and (2) the trier of fact draws a conclusion through the process of reasoning—backed by human experience. *Id.*

Here, Officer Kelchen testified the driver was the only occupant of the truck. The driver parked in the driveway and approached his squad car from the driver's side of the truck. When the officer told Kramer his registration was expired, he walked with the officer to the back of the truck to look at the license plates. Officer Kelchen also overheard Kramer tell a cell phone caller that he "got stopped" for expired tags. During the stop, Kramer never told the officer that he was not driving the truck. The district court could reasonably conclude from

¹ In his appellate brief Kramer mentions his *Miranda* rights and contends, without any citation to the record or case law, that his statements should have been suppressed. This passing reference does not merit appellate review. See *State v. Mann*, 602 N.W.2d 785, 788 n.1 (Iowa 1999) (holding random mention of an issue, without elaboration or supporting authority, is insufficient to raise the issue for appellate court's consideration).

² The video-recording shows the pickup pull in next to another car in the driveway, obscuring the officer's view of the driver's door.

the officer's testimony, and its own process of reasoning, that Kramer had operated the pickup truck. On this record, we find sufficient evidence to support the district court's verdict.

B. Authority of County Attorney

Kramer challenges the authority of the county attorney to prosecute his case; his argument focuses on the oaths of office and bonds required of county officials under Iowa Code section 63.10 and article XI, section 5 of the Iowa Constitution and the constitutionality of Iowa Code section 39.17.

We decline to reach the merits of his argument because his motion to dismiss on this ground was untimely. As the district court determined, Kramer had forty days from his February 17, 2011 arraignment to file pretrial motions. Iowa R. Crim. P. 2.11(4). Kramer did not file his motion to dismiss until February 27, 2012, more than one year after his arraignment. Because Kramer did not establish good cause for the delay, the district court properly denied the motion to dismiss as untimely. See *State v. Wagner*, 410 N.W.2d 207, 212 (Iowa 1987).

C. Authority of Peace Officer

Finally, Kramer argues the charges against him should be dismissed because his arrest was beyond the authority accorded Officer Kelchen under Iowa Code sections 321.1(50) and 801.4(11)(b). We agree with the district court that Kramer misinterprets section 321.1(50).

The motor vehicle chapter defines "peace officer" as "every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations in addition to its meaning in section 801.4." Iowa Code § 321.1(50).

Section 801.4(11)(b) includes city police officers, like Officer Kelchen, in the definition of peace officers.

Kramer gloms onto the term “traffic regulations” in section 321.1(50) to support his contention that Officer Kelchen lacked authority to arrest him for anything more serious than traffic violations. The problem with Kramer’s argument is that he reads the statutory provision in isolation. See *State v. Nail*, 743 N.W.2d 535, 541 (Iowa 2007) (directing that code provisions “must be read *in pari materia* with the system of laws that make up our criminal law to produce a coherent whole”).

Iowa Code section 804.7 authorizes a peace officer to make an arrest without a warrant for a public offense committed in the officer’s presence. A public offense is defined as an offense “which is prohibited by statute and is punishable by fine or imprisonment.” Iowa Code § 701.2. Kramer’s convictions all fit the definition of public offense. See Iowa Code §§ 321.98, 321.218, 321.561, 903.1. When the definition of peace officer in section 321.1(50) is read in conjunction with the rest of the criminal code, Officer Kelchen had statutory authority to arrest Kramer.

AFFIRMED.